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**Date:** 04/04/2018  
**Time:** 02:45 PM  
**Location:** 229  
**Committee:** Senate Education  
Senate Commerce, Consumer Protection,  
and Health

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 2271, HD2 RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

**Purpose of Bill:** Clarifies the provision of behavioral analysis services to students in public schools. (HB2271 HD2)

**Department's Position:**

The Department of Education (Department) appreciates this opportunity to testify on HB 2271 HD2 as we have continued to seek clarification on the scope and application of Chapter 465D in a school setting.

The Department's work to provide students with applied behavior analysis (ABA) in a school setting is a work in progress. We respectfully ask that this committee replace HB 2271 HD2 with the contents of SB 2925 SD1 HD1 and append the definition of "Applied behavior analysis" under 465D-2 to read:

- "Applied behavior analysis" means interventions that are based on scientific research and the direct observation and measurement of behavior and the environment. The practice of behavior analysis expressly excludes commonly used multi-tiered educational and behavioral strategies (e.g., prompting, reinforcement, antecedent strategies, etc.)"

By clarifying the definition of behavior analysis practices, this will allow teachers to make data-informed instructional and behavioral decisions that support the learning of their students without the need for a licensed behavior analyst (LBA), and being potentially subject to any fines for not possessing an ABA licence from the Department of Commerce and Consumer Affairs.

SB 2925 SD1 HD1 supports the professional standards, competencies and training of our qualified employees recognizing that the scope of practice for a licensed special education

teacher may often overlap behavior analysis practices.

The Department is committed to continuing our discussions with the Hawaii State Teachers Association, Hawaii Government Employees Association, parents and other stakeholders about ABA as we must accomplish this work together. Students are our top priority and all parties are committed to finding common ground to improve our responsiveness to Hawaii's families.

#### **HB 2271 HD2: Impact to Personnel**

The Felix Consent Decree and Luke's Law have both served to ensure the Department provides a menu of services delivered by school based behavior health specialists and licensed and credentialed professionals to best meet the needs of students.

A school based behavior health specialist is a masters level mental health professional who provides mental and behavioral health counseling and intervention services supporting all students. These services are provided in the framework of a Positive Behavior Intervention System or as an Individualized Education Program (IEP)-related service. Within the Department, these specialists are bargaining unit members of the Hawaii Government Employees Association.

HB 2271 HD2 would require the Department to:

- Review minimum requirements of approximately 800 Department employees (e.g., school based behavior health [SBBH] employees), which would result in displacement, reassignment and/or requiring employees to seek additional licensing. These employees serve about 10,000 students, 4,545 of whom have IEPs;
- Initiate displacement and/or reassignment of the SBBH employees. This would require the Department to procure licensed contractors to provide services to students; and
- Procure contractors to provide supervision for direct support workers (e.g., educational assistants) as defined in Section 2 (3)(B) who require supervision by a licensed behavior analyst. In Hawaii, a majority of registered behavior technicians (RBTs) are already working for or employed by private health care providers.

The Department continues to build capacity of existing personnel (refer to Table I). Based on original versions of this measure, the Department estimated 38 licensed behavior analysts (LBAs) and 575 registered behavior technicians will be needed based on 575 total students who are receiving ABA services. Pursuant to HB 2271 HD2, the Department anticipates the number of students receiving services will increase. This increase will require additional LBAs and RBTs to meet student service needs.

**Costs.** The cost of obtaining a Board Certified Behavior Analyst (BCBA) certification for LBAs has been estimated at \$20,000 per individual. This includes both graduate level coursework and required hours of supervision. RBT certification runs about \$1,100 per individual and comprises both didactic and performance training. It should be noted that a RBT must be supervised by a LBA in order to retain their credential. The cost is approximately \$12,600 annually per RBT.

Based on HB 2271, the Department anticipated initial program implementation costs to be approximately \$2.0M with additional post-implementation costs to sustain internal capacity. **However, pursuant to HB 2271 HD2, the scope of students provided ABA services has been expanded which will likely translate to costs exceeding previous estimates.**

**Further, the Department will need to procure services for students in need of SBBH services, as SBBH staff lacking or pending licensure will not be able to deliver those services.**

**Other Costs.** The annual contracted costs for an LBA is approximately \$250,000 based on a 40-hour work week at the current Hawaii market rate of \$125 per hour.

There are currently fewer than 160 LBAs in the entire state. This in-state work force situation forces constraints on the Department's ability to fulfill the requirements of the current law. Out of state contractors will further drive up the costs.

**Previous versions of this measure:**

**HB 2271.** Clarified the scope of licensure for individuals engaged in the practice of behavior analysis in a school setting and ensures services identified in a student's IEP are provided by licensed and credentialed professionals.

**HB 2271 HD1.** Afforded the Department additional time to July 1, 2021 to address the work of a direct support worker as detailed in Section 2 (3)(B).

**HB 2271 HD2: Challenges**

- Limits the practice of behavior analysis in a public school system to a licensed behavior analyst only. Only these licensed behavior analysts would be able to deliver any behavioral intervention services to students with or without disabilities.

*The Department recognizes the practice of behavioral analysis in the school setting for all students is valuable. However, required licensure requirements for the Department should be limited to practitioners designing and implementing an applied behavior analysis program for students who exhibit extreme behaviors and for whom less intensive interventions were unsuccessful.*

*As of February 1, 2018, 1909 students with Autism Spectrum Disorder (ASD) are enrolled in Hawaii public schools. Three hundred thirty-five (335) of the total 1909 ASD students, or 17.5 percent, have IEPs that include ABA services. All 335 of those students are receiving an ABA program. An additional 240 students who are non-ASD also receive ABA services per their IEP to support their learning. Given the broad application of HB 2271 HD2 in providing services to all students, the Department anticipates the scope of students who receive services will expand. Notably, due to the lack of licensed individuals statewide, the Department would not be able to satisfy the needs of all students.*

- Broadens definition of the practice of behavior analysis, which limits teachers, school counselors, and other educators, not licensed as a behavior analyst, from effectively managing and supporting student learning.
- Restricts supervision of direct support workers (e.g., educational assistants). Direct support workers who implement a behavior analysis program as defined in Section 2 (3)(B) would only be able to be supervised by a licensed behavior analyst.

Lastly, should HB 2271 HD2 pass in its current form, the Department respectfully requests additional time to meet the mandates of this measure. Similar to the extension of time requested by other state agencies, the Department seeks an implementation of July 1, 2024.

Thank you for this opportunity to provide testimony on HB 2271 HD2.

**Table I. Building internal capacity.**

The Department needs additional time to build its internal capacity of licensed behavior analysts (LBA) and credentialed paraprofessionals that provide evidence-based interventions as part of an ABA program.

<b>HIDOE BACB (Behavior Analyst Certification Board) Credentialed Personnel</b>				
<b>District/ Complex Area</b>	<b># of LBAs</b>	<b># of Individuals in a BCBA* Training Program</b>	<b># of RBTs</b>	<b># of Individuals in a RBT Training Program</b>
Honolulu District	1	0	0	10
Central District	1	4	1	21
Leeward District	0	15	0	44
Windward District	4	8	5	29
Hawaii District	0	4	0	30
Maui District	5	7	2	3
Kauai District	1	0	0	5
STATE	3	1	1	3
Total	<b>15</b>	<b>39</b>	<b>9</b>	<b>145</b>

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).